BLUE LAKE RANCHERIA,	:	Order Affirming Decision
Appellant	:	
v.	:	
	:	Docket No. IBIA 93-1-A
ACTING DEPUTY COMMISSIONER OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	August 24, 1993

This is an appeal from an August 18, 1992, decision of the Acting Deputy Commissioner of Indian Affairs (Deputy Commissioner), denying an application for a FY 1992 Community and Economic Development grant.

The FY 1992 Community and Economic Development Grant Program was announced in the Federal Register on February 20, 1992. 57 FR 6122. The announcement stated that the available funds would be divided into four categories in order to ensure equitable competition among tribes. One category, called "Small Tribes," included tribes with populations of 1,500 or less. The announcement also stated that, in order to be eligible for a grant, a tribe "must serve a population of at least 150 Indians/Native Alaskans." Appellant, which has fewer than 150 members, sought a waiver of this eligibility requirement. The waiver was granted by the Deputy Commissioner on April 9, 1992. Appellant thereafter submitted its application.

By letter of June 29, 1992, the Deputy Commissioner advised appellant that its application had not been selected for a grant. He enclosed copies of the comments made by the three reviewers who had rated its application. However, he did not include any appeal information.

Appellant filed a document entitled "Appeal notice" with the Deputy Commissioner, who treated it as a request for reconsideration. On August 18, 1992, the Deputy Commissioner reaffirmed his original decision and informed appellant that it could appeal his decision to the Board.

Appellant's notice of appeal to the Board was received on September 16, 1992. The appeal was docketed on December 15, 1992, following receipt of the administrative record. Briefs were filed by both appellant and the Deputy Commissioner.

Appellant contends that one of the three reviewers who rated its application, acting under the belief that appellant was not eligible for the grant, gave appellant unfairly low marks based upon that belief. The Deputy Commissioner contends that, even if the score given to appellant's

application by this reviewer were changed to a perfect score of 100, appellant's application would still not have ranked high enough to be funded.

The reviewer to whom appellant objects (Reviewer A) gave appellant's application a score of 19. 1/ The other two reviewers (Reviewers B and C) gave it scores of 39 and 59. 2/ Appellant's average score was therefore 39. Its application ranked 42nd out of 50 applications in the Small Tribes category. Only 14 applications in this category were funded, and the lowest ranking application to be funded received a score of 70.3. As the Deputy Commissioner argues, if Reviewer A's score were thrown out, and a score of 100 were substituted, appellant would have a score of 66, which would not qualify it to receive a grant.

Appellant also contends that reviewers erred in commenting that its project had no community support. Appellant does not quote the comments it objects to or otherwise identify the reviewers who made the comments. The Deputy Commissioner notes that, while none of the reviewers made the specific comment that appellant's project had no community support, two of the reviewers identified weaknesses in appellant's application under Criterion A, which concerns, inter alia, community involvement and support. One of these reviewers was Reviewer A. The other was Reviewer B. Reviewer B gave appellant 6 out of a possible 15 points for Criterion A. The Deputy Commissioner argues that, even if appellant were awarded the full 15 points under Criterion A, on behalf of Reviewer B, in addition to the full score discussed above on behalf of Reviewer A, appellant would have only a score of 69, still insufficient to qualify it for a grant.

The Deputy Commissioner states that he does not concede that appellant should have received these higher scores, but makes the supposition for the purpose of argument only. Even appellant does not contend that it should have been awarded 100 points in place of the 19 points it was actually awarded by Reviewer A. In its appeal to the Deputy Commissioner, however, appellant contended that Reviewer A's score should have been thrown out. Even if the scores given by both Reviewer A and Reviewer B were thrown out, however, on a theory that they were tainted by the reviewers' beliefs

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1/ Reviewer A stated, on the rating sheet for Criterion A: "Note: This application doesn't fit the criteria as stated in the Federal Register. The problem is there are only 107 tribal members. To qualify you have to have 150. There is a waiver attached signed by the Deputy Commissioner but there is no waiver clause in the Federal Register."

2/ Reviewer B, who awarded appellant a score of 39, also commented that appellant did not meet the eligibility requirement. Appellant does not object to Reviewer B on those grounds. It is possible that appellant did not receive a copy of the cover sheet for Reviewer B's ratings, on which this comment appears, and was therefore unaware of the comment. Since the cover sheets contain the names of the reviewers, they may not have been furnished to the applicants.

concerning appellant's eligibility, appellant would not be helped. The remaining score of 59, the highest score received by appellant, is far below the score needed to qualify for a grant.

Appellant has not put forth any theory under which it could possibly prevail here. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Deputy Commissioner's August 18, 1992, decision is affirmed.

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Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge